

This letter describes a multiple advance trade-in situation involving aircraft. See 86 Ill. Adm. Code 130.455. (This is a PLR).

October 1, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of September 13, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This is a request for a Private Letter Ruling, pursuant to 2 Ill. Adm. Code 1200, Sec.110 on behalf of AAA. AAA is not under audit or investigation by the Illinois Department of Revenue. Enclosed is a power of attorney authorizing me to represent AAA in making this request.

FACTS

The Department of Revenue has not previously ruled on this issue, other than a General Information Letter dated July 23, 2001 that was based on facts identical to this ruling request. There have been no other previous requests for rulings by AAA or its related entities on this issue and no request for ruling has ever been withdrawn before a ruling letter was issued on this issue.

AAA is a retailer of tangible personal property who owns corporate aircraft for use in its business operations but is not engaged in the business of selling aircraft at retail.

AAA is planning to dispose of two Falcon aircraft and purchase two Lear aircraft. For the purposes of this letter the Falcons will be referred to as F1 and F2 the Lears will be referred to as L1 and L2. The transactions will be structured as like kind exchanges for Federal Income Tax purposes. The Seller will be BBB, a registered FAA Dealer, and aircraft retailer who will be the seller and qualified intermediary. The seller will sell, at retail, both L1 & L2 to AAA and will accept F1 & F2 from AAA as trade-ins of like kind and character property.

In May of 2001 AAA will trade-in F1 with a fair market value of \$ Million. There will be \$ in boot. Seller will hold \$ million of the boot in escrow pending delivery of L2 and will receive \$ in cash.

On September 15, 2001 AAA will take delivery of L1 for a purchase price of \$ and acquire a 33% interest in L2. On November 5, 2001 AAA will acquire the remaining interest in L2 and will take delivery of L2. The purchase price of L2 is \$ Million and the fair market value of the trade-in, F2, is \$ Million. AAA will trade-in F2 on November 15, 2001 and will apply \$ Million of the boot from the F1/L1 transaction to the purchase price of L2.

In total the purchase price of L1 & L2 is \$. The trade in value of F1 & F2 is \$ Million. AAA will receive \$ in cash when the transaction is complete.

At the time of the purchase of L1 and trade-in of F1 it is contemplated that L2 will be able to be specifically identified and a contract to purchase L2 will be entered into by the parties. However, it is possible that the parties may not at that time be able to specifically identify L2 or finalize the purchase of L2. If that is the case, the parties will enter into an agreement that contractually obligates AAA to purchase an aircraft from the seller within 9 months of the purchase of L1 and trade-in of F1. The purchase of both aircraft will be documented by a sales contract that will identify each aircraft sold and traded by type, model and serial number. The dates of delivery of the purchased aircraft and the traded aircraft will be specified but may be amended with the agreement of the parties.

We are seeking clarification of the application of 86 Ill Admin. Code, Sec. 130.455 to the purchase and trade-in of aircraft. We have not found any previous letter rulings from the Department that either extend the application of the regulation to aircraft or specifically rule that the regulation is limited only to motor vehicles and if so specifically what type of vehicles. Your assistance in this matter is greatly appreciated.

Rulings Requested

1. The trade-in of F1 in the purchase of L1 constitutes a valid trade-in under the terms of 86 Ill. Admin. Code, Sec.130.425.
2. The above-described transactions qualify as advanced trade-ins under the terms of 86 Ill. Admin. Code, Sec.130.455. Notwithstanding that this regulation references motor vehicles, we believe that the regulation should apply equally to any titled or registered property that is sold by a dealer and registered in the State of Illinois. There is no apparent reason that the regulation should not apply to aircraft and watercraft as well as motor vehicles. All of these items are titled or registered property and all sales of these items are required to be individually reported on transaction reporting returns.
3. AAA will be contractually obligated to purchase an aircraft from seller within 9 months after the date of the advance trade-in transaction. A portion of the boot of \$ from the F1/L1 transaction will be held by seller in escrow pending the completion of the L2 purchase. \$ Million of the \$ will be designated as trade-in credit. The remaining \$ will be returned as cash to AAA.

4. Additionally, the above-described transactions may qualify as valid multiple trade-ins and the timing of the delivery of the respective aircraft will not affect the taxability of the transaction as long as all aircraft are identified in the purchase documents. If all of the aircraft can be specifically identified and a contract to purchase L2, as a specifically identified aircraft, is entered into at the time of the F1/L1 transaction the fact that L2 will be delivered later than L1 and F2 may be surrendered later than F1 does not affect the fact that all of the aircraft were exchanged in a transaction that qualifies as a multiple trade-in. The transaction is a single transaction involving multiple sales and trades with separate delivery dates.
5. If for some reason the F2/L2 transaction is not consummated or is delayed for more than 9 months, the tax consequence will simply be that the boot from the F1/L1 transaction will no longer be available to AAA as a trade-in credit in future transactions. The \$ Million trade-in value of F1 that was applied to the purchase of L1 will not be lost.

We are unaware of any other law, regulation, Department ruling or other authority that suggests that the above described transactions would be subject to tax.

If the Department requires additional information prior to issuing a Private Letter Ruling or if the Department anticipates issuing a ruling contrary to the above analysis, please contact the undersigned.

Please call me if you have any questions.

DEPARTMENT'S RESPONSE:

We believe that the trade-in of the first Falcon aircraft (F1) by AAA as part of the purchase of the first Lear aircraft (L1) from the registered dealer of aircraft, BBB, would qualify as a valid trade-in under the provisions of 86 Ill. Adm. Code 130.425 as long as all provisions of Section 130.425 are complied with, including clear documentation of the transfers of title. The delivery of the (L1) aircraft approximately 4 months after the trade-in of the (F1) aircraft and purchase of the (L1) aircraft does not affect the validity of that trade-in transaction.

The trade-in of the first Falcon aircraft (F1) by AAA will qualify as an advance trade-in (actually a partial advance trade-in in the amount of \$ million) for the purchase of the second Lear aircraft (F2) from BBB. If AAA is not contractually obligated to purchase the second Lear aircraft (F2) from BBB at the time of the trade-in of the first Falcon aircraft (F1) or if the second Lear aircraft (F2) cannot be specifically identified at the time of that trade-in, the trade-in of the first Falcon aircraft (F1) will still qualify as an advance trade-in as long as AAA enters into an agreement at the time of the trade-in to purchase an aircraft from BBB within 9 months of the date of that trade-in.

The fact that the aircraft (L1 and L2) that are being purchased by AAA will be delivered at a date later than the date that the F1 and F2 aircraft are traded-in to BBB does not affect whether the trade-ins of the F1 and F2 aircraft qualify as multiple advance trade-ins so long as AAA is contractually obligated to purchase the L1 and L2 aircraft (or other specifically identified aircraft¹) within 9 months from the date of the trade-in of the first aircraft (F1). See subsection (d) of 86 Ill. Adm. Code 130.455.

If the purchase of the L2 aircraft by AAA cannot be completed or is delayed for more than 9 months from the date of the trade-in of the F1 aircraft, the advance trade-in amount of \$ million from the trade-in of the F1 aircraft cannot be used as a trade-in.² In such a case, however, the amount of the trade-in of the F1 aircraft by AAA that was applied against the purchase price of the L1 aircraft remains a valid trade-in and is not affected by the loss of the excess trade-in amount that was intended to be applied to the purchase of the L2 aircraft.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk

¹ Based upon my earlier telephone conversations with you, the Department understands that an aircraft may be specifically identified to a contract for purchase even before it has been completely manufactured as long as the contract specifies an airframe number or other similar number that identifies a specific aircraft.

² The \$ million represents the excess of trade-in value from the trade-in of the F1 aircraft on the purchase of the L1 aircraft (F1 trade-in value of \$ million minus the purchase price of the \$ and the \$ returned in cash to AAA leaving \$ million as an advance trade-in for the L2 aircraft).